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KARL MORELL

**BALL JANIK LLP**

A T T O R N E Y S

1455 F STREET, NW, SUITE 225  
WASHINGTON, D.C. 20005

www.balljanik.com

TELEPHONE 202-638-3307  
FACSIMILE 202-783-6947

kmorell@dc.bjllp.com

March 16, 2011

E-FILE

Ms. Cynthia T. Brown  
Chief, Section of Administration  
Office of Proceedings  
Surface Transportation Board  
395 E Street S.W.  
Washington, DC 20423-0001

228997

Re: STB Finance Docket No. 35465, Autauga Northern Railroad,  
L.L.C. – Lease and Operation Exemption – Norfolk Southern  
Railway Company

Dear Ms. Brown:

Attached for filing is the Reply of Autauga Northern Railroad, L.L.C., to the  
Petition to Stay filed by International Paper Company.

If you have any questions, please contact me.

Sincerely yours,



Karl Morell

**BEFORE THE  
SURFACE TRANSPORTATION BOARD**

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**STB FINANCE DOCKET NO. 35465**

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**AUTAUGA NORTHERN RAILROAD, L.L.C.  
--LEASE AND OPERATION EXEMPTION--  
NORFOLK SOUTHERN RAILWAY COMPANY**

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**REPLY TO PETITION TO STAY**

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**KARL MORELL  
Of Counsel  
BALL JANIK LLP  
Suite 225  
1455 F Street, N.W.  
Washington, D.C. 20005  
(202) 638-3307**

**Attorney for:  
AUTAUGA NORTHERN  
RAILROAD, L.L.C.**

**Dated: March 16, 2011**

**BEFORE THE**  
**SURFACE TRANSPORTATION BOARD**

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**STB FINANCE DOCKET NO. 35465**  

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**AUTAUGA NORTHERN RAILROAD, L.L.C.**  
**--LEASE AND OPERATION EXEMPTION--**  
**NORFOLK SOUTHERN RAILWAY COMPANY**

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**REPLY TO PETITION TO STAY**  

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Autauga Northern Railroad, L.L.C. ("ANRR"), hereby replies in opposition to the Petition for Stay filed by International Paper Company ("IP") with the Surface Transportation Board ("Board") on March 11, 2011 ("Petition").

**BACKGROUND**

On February 17, 2011, ANRR filed its Verified Notice of Exemption, pursuant to 49 C.F.R. Part 1150, Subpart D—Exempt Transactions ("Class Exemption"), to permit ANRR to lease and operate 43.62 miles of rail lines ("Leased Lines") owned by Norfolk Southern Railway Company ("NS"), and to obtain by assignment incidental trackage rights over a 10.08-mile of rail line owned by CSX Transportation, Inc. ("Notice of Exemption").<sup>1</sup>

**REPLY**

The standards governing disposition of a request for stay are: (1) that there is a strong likelihood that the movant will prevail on the merits; (2) that the movant will suffer irreparable harm in the absence of a stay; (3) that other interested parties will not be substantially harmed;

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<sup>1</sup> By letter dated March 11, 2011, CSXT correctly informed the Board that the parties were still negotiation over the assignment of the trackage rights.

and (4) that the public interest supports the granting of the stay. *Hilton v. Braunskill*, 481 U.S. 770, 776 (1987); *Wash. Metro. Area Transit Comm'n v. Holiday Tours, Inc.*, 559 F.2d 841, 843 (D.C. Cir. 1977); *Va. Petroleum Jobbers Ass'n v. FPC*, 259 F.2d 921, 925 (D.C. Cir. 1958) ("Petroleum Jobbers"). It is the movant's obligation to justify the exercise of such an extraordinary remedy, *Cuomo v. United States Nuclear Regulatory Comm.*, 772 F.2d 972, 978 (D.C. Cir. 1985), and the movant carries the burden of persuasion on each of the four elements required for the extraordinary relief. *Canal Auth. of Fla. v. Callaway*, 489 F.2d 567, 573 (5<sup>th</sup> Cir. 1974).

As is demonstrated below, IP has failed to meet the stay criteria.

#### **IP Is Unlikely To Prevail On The Merits**

IP has not demonstrated, and it is unlikely they can ever demonstrate, that ANRR's Notice of Exemption fails to comply with the Board's applicable regulations or that the proposed transaction does not qualify for the class exemption.<sup>2</sup>

IP expressly states that it is not opposing the transaction, it only seeks a brief stay to enable ANRR and NS to provide IP "information sufficient to show that ANRR would be able to meet its obligations to IP and other rail users to provide reasonable rail freight service, rehabilitate the track, resume providing adequate switching service and provide adequate car supply." Petition at 5. ANRR stands willing to provide all requested information to IP at the

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<sup>2</sup> IP also seeks a stay of the transaction in STB Finance Docket No. 35464, *Watco Holdings, Inc. – Continuance in Control Exemption – Autauga Northern Railroad, L.L.C.*, wherein Watco Holdings, Inc. ("Watco") seeks an exemption to continue in control of ANRR, once ANRR becomes a Class III railroad. Granting a stay in that proceeding would be a futile gesture since Watco cannot consummate that transaction until ANRR consummates the transaction that is the subject matter of this proceeding.

time and place of IP's choosing. The reason IP does not have the requested information is because IP has not been willing to meet with officials of ANRR's parent company, Watco.<sup>3</sup>

Moreover, IP is, or should be, aware of ANRR's parent company, Watco. Watco currently owns 22 Class III railroads operating in 18 states collectively comprising over 3,500 miles of track. Watco subsidiaries also operate 14 railcar shops and four locomotive shops and perform contract switching throughout the United States for several industries, including the paper industry.

More importantly, one Watco railroad subsidiary serves the IP facility at Spring Hill, Louisiana; another Watco railroad subsidiary serves the IP facility at Oklahoma City, OK; another Watco railroad subsidiary serves the IP facility at Kansas City, MO; another Watco railroad subsidiary serves the IP facilities at Kalamazoo and Three Rivers, MI; another Watco railroad subsidiary serves the IP facilities at Wichita, KS; and another Watco railroad subsidiary serves the IP facility at Redwood, MS. Another Watco subsidiary provides contract switching at IP's Prattville, AL mill, the same mill ANRR seeks to serve as a common carrier.

Watco provides extensive services to IP, and IP's service concerns seem to be directed at NS, but at the same time IP seeks to delay the commencement of ANRR's improved services and track investments that will benefit customers along the Leased Lines.

In the Notice of Exemption, ANRR committed to immediately begin making investments to upgrade the Leased Lines in order to improve the long term viability of the Lines and improve the rail service. Notice of Exemption at 4. Within the first six months of taking over operations, ANRR intends to upgrade the tracks from excepted and FRA Class 1 to FRA Class 2 standards. This is an increase in track speeds from 10 mph to 25 mph. In addition, ANRR, by guaranteed

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<sup>3</sup> IP claims that it is concerned that ANRR may not be able to fill the void left by NS but then goes on to state that there is not much of a void left to fill.

funding of its parent company, will make significant improvements to a key bridge that is in serious need of repair in order for the Leased Lines to remain viable. Watco has contacted IP to brief them fully on service plans and improvements and is available to meet on short notice at a time and place of IP's choosing. ANRR will resume six day a week service to the IP facility beginning on the first day of operations and provide a minimum of five day a week service following the line upgrades, based on volumes and performance measure to be agreed upon by IP.

The request for a stay is a collateral attack on the Board's Class Exemption. The Class Exemption does not require detailed financial and operating data that would otherwise be required for an application under 49 U.S.C. § 10901. As IP notes, that was an issue raised and rejected by the Board's predecessor in adopting the Class Exemption. *See Class Exemption - Acq. & Oper. Of R. Lines Under 49 U.S.C. 10901*, 1 I.C.C.2d 810, 817 (1985). It would be fundamentally unfair to change the rules governing the Class Exemption, or the application of those rules, in the context of this proceeding.

For well over 20 years, Watco non-carrier subsidiaries have successfully acquired and operated thousands of miles of rail lines. The Watco railroads are financially sound and leaders in the industry. IP provides no compelling reason why ANRR should be treated differently than the hundreds of non-carriers who have filed under the Class Exemption since 1985.

Consequently, if the Board requires ANRR to submit financial and operational data, it and similarly situated others can expect to have to do so in all future transactions processed under the Class Exemption. This will take away the resources that could more productively be used to serve customers.

The two proceedings cited by IP are unavailing. In STB Finance Docket No. 35002, *Savage Bingham & Garfield Railroad Company – Acquisition and Operation Exemption – Union Pacific Railroad Company* (not printed), served March 28, 2007, the Board stayed the notice of exemption so that it could determine in a related proceeding whether the sale of the rail line to a transit authority would unreasonably burden the freight operations. No such sale is planned for the rail line serving IP. In STB Finance Docket No. 35020, *Northern and Bergen Railroad, L.L.C. – Acquisition Exemption – A Line of Railroad Owned by New York & Greenwood Lake Railway* (not printed), served May 25, 2007, the Board stayed the notice of exemption so that the purchaser could respond to a state agency's environmental concerns and demonstrate that the solid waste transload facility was in compliance with health and safety laws. ANRR is not proposing to operate a solid waste transload facility nor is it seeking federal preemption to avert local health and safety laws applicable to solid waste processing facilities.

Watco officials continue to be available to meet with IP at a time and place of their choosing.<sup>4</sup>

#### **Denial Of The Stay Will Not Cause IP Irreparable Harm**

An administrative decision is not ordinarily stayed without an appropriate showing of irreparable harm. *Permian Basin Area Rate Case*, 390 U.S. 747, 777 (1968). Indeed, a stay is an extraordinary remedy that should not be sought unless the moving party faces unredressable actual and imminent harm that would be prevented by a stay. See STB Finance Docket No. 34824, *Tri-State Brick & Stone of N.Y., Inc. – Pet. For Declaratory Order* (not printed), served

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<sup>4</sup> IP questions whether the Lease Agreement between NS and ANRR contains any so-called “paper barriers”. In the Notice of Exemption, ANRR certified that there are no interchange commitments in the Lease Agreement.

February 12, 2008. IP has failed to demonstrate that anyone will suffer irreparable harm in the absence of a stay.

IP's alleged concerns that service might get worse once ANRR takes over operations, even if accurate, do not rise to the level of sustaining a finding of irreparable harm. *See* STB Finance Docket No. 34145, *Bulkmatic Railroad Corporation – Acquisition Exemption – Bulkmatic Transport Company* (not printed), served December 27, 2001. The showing of “mere injuries, however substantial, in terms of money...expended in the absence of a stay” do not constitute irreparable injury because adequate compensatory relief can be had at a later date. *Petroleum Jobbers* at 925. Neither the Board nor the courts have found economic injuries of this nature to be irreparable because they are compensable through reparations. *See* Finance Docket No. 30965 (Sub-No. 1), *Delaware and Hudson Railway Co. – Lease and Trackage Rights Exemption – Springfield Terminal Railway Company* (not printed), served July 15, 1988 and STB Finance Docket No. 33326, *I&M Rail Link, LLC – Acquisition and Operation Exemption – Certain Lines of Soo Line Railroad Company D/B/A Canadian Pacific Railway* (not printed), served April 4, 1997.

#### **A Stay Would Harm Shippers On the Leased Lines**

IP is concerned about mounting service problems and worsening track conditions. Petition at 4. ANRR is committed to upgrading the tracks and improving service to the customers on the Leased Lines. ANRR intends to reinstate the six day a week service IP seeks immediately beginning on the first day of operations. (NS is currently providing three day a week service.) Consequently, the parties that will be harmed by a stay are IP itself and the other customers on the Leased Lines. Delaying the implementation of the involved transaction will



have a material, adverse effect on the shippers located on the Leased Lines by delaying the benefits they will realize once ANRR commences operations.

#### **A Stay Is Not In The Public Interest**

IP has failed to demonstrate how issuance of a stay would further the public interest. ANRR's proposed change in operations is intended to increase the efficiency of rail operations in the area, improve service to the shippers and increase jobs on the Leased Lines. For more than two decades, the Board and its predecessor have consistently stated that the public interest is served by encouraging the formation of short line and regional rail carriers. Consequently, granting the stay is contrary to the public interest.

#### **CONCLUSION**

ANRR respectfully urges the Board to deny IP's Petition. The Petition falls woefully short of meeting the criteria for a stay.

Respectfully submitted,



KARL MORELL  
Of Counsel  
BALL JANIK LLP  
Suite 225  
1455 F Street, N.W.  
Washington, DC 20005  
(202) 638-3307

Attorney for:  
AUTAUGA NORTHERN RAILROAD, L.L.C.

Dated: March 16, 2011

**CERTIFICATE OF SERVICE**

I hereby certify that on this 16<sup>th</sup> day of March, 2011, I have caused a copy of the foregoing Reply to be served on all parties of record.

Karl Morell

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